**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**
**(CIVIL DIVISION)**

**MISCELLENEOUS APPLICATION NO. 572 OF 2020**
**(ARISING FROM COMPANY CAUSE NO. 11 OF 2019)**

1. **LUITINGH LAFRAS**
2. **PELSER WILLEN HENDRICK a.k.a. BILL PELSER ……APPLICANTS**

**VERSUS**

**SPECIAL SERVICES LTD ……..……RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application brought under the provisions of Section 82 and 98 of the Civil Procedure Act Cap 71 and Order 46 Rule 1(1)(a) & 8 of the Civil Procedure Rules S.I 71-1)for review of the judgment and orders of this court in Company Cause No. 11 of 2019 (Appeal) where court held inter alia that the decision of the registrar taking back the shareholding of Saracen Uganda Limited 75% and Special Services Limited 25% to be set aside; and that the company register be rectified and the shareholding in Saracen be reinstated to the position before company petition No.01 of 2017. Special Services Limited as the petitioners on one hand and Saracen International, Winork Investments and Kasirye, Byaruhanga and Co. Advocates as respondents.

The Application was heard and disposed of inter-party in favor of the Applicant wherein the following orders were issued;

1. *The Appeal is allowed in the following terms;*
    a) *The decision of the registrar taking back the shareholding of Saracen Uganda Limited 75% and Special Service Limited 25% is set aside.*
    b) *The order that the Company shall pay the costs of the Inspector is set aside.*
    c) *The costs of the Inspector shall be met by the Respondent*
2. *No order as to costs*

The orders above were to be complied with by Special Service Limited through the Companies Registrar General. The said orders were not complied with hence this application. The Applicant thus sought the following to be determined to support a finding for the review;

The Applicants filed an affidavit in support of the Application through Lafras Luitingh dated 21st September, 2020. The Respondent filed their affidavits in reply through Ruth Gertrude Auma on the 22nd September, 2020,

The Respondent in her affidavit in reply states;

1. That it is quite true the petitioner in petition cause No. 1 of 2017 has filed an amended petition and added a prayer for an order of rectification of the register by revision the shareholding in Saracen Uganda Limited (the Company) to the original shareholders (Saracen International Limited 75% and Special Services Limited 25%.

2. That is also true that the learned deputy registrar general held that the view, and rightly so, that the petition before her had not been disposed of. It is our submission that this opinion flows from your Lordship's ruling, setting aside the decision to take back shareholding and ruling that the inspector's costs be met by the respondent. Indeed, by a letter dated 23rd day of July 2020, M/S BDO East Africa was appointed to carry out an investigative review of Saracen Uganda Limited as borne out in Paragraph 6 of her affidavit.

Counsel were advised to file written submissions during the last hearing, which I had the occasion of reading and consider in the determination of this application.

The Applicant was represented by *Mr. Mbalinda Tom* and the Respondent represented by *Mr. Wabwire Anthony*

There are two issues arising;

1. ***Whether there are grounds for court to grant an order of review?***
2. ***Whether the applicant is entitled to the orders sought in the application?***

***Submissions***

Counsel submitted that just like the right of Appeal, an order of review is a creature of statute which must be provided for expressly. In considering an application for review, the court exercises its discretion judicially as was held in the case of **Abdul Jafar Devij vs. Ali RMS Devij [1958] EA 558**

Counsel further noted that Review is provided for under **Section 82 of the Civil Procedure Rules S.I 71-1 Rules and highlighted the case of FX Mubuuke vs. UEB High Court Misc. Application No.9 of 2005** which clearly outlines these as;

1. That there is mistake or manifest mistake or error apparent on the face of the record

2. That there is discovery of new and important evidence which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made
3. That any other sufficient reason exists.

Counsel submitted that Section 82 of the Act is wider in space since it permits court upon an application for review to make such order in the decree or order as it thinks fit.

Counsel cited the case of **Re- Nakivubo Chemists (U) Ltd HCB 12,** it was held that; the expression sufficient should be read as meaning sufficiently of a kind analogue to the discovery of new and important evidence previously overlooked by excusable misfortune and same mistake or error application on the face of the record.

Counsel submitted that in as much as the decision was in favor of the applicant, the applicant seeks further clarity on the shareholding of the company by stating each shareholder's shareholding as per the table below:

| **Name of the shareholder** | **Shares held** | **Percentage shareholding** |
|---|---|---|
| Lafras Luitingh | 88 | 33% |
| Bill Pelser | 88 | 33% |
| Winork Investments | 13 | 5% |
| Special services | 66 | 25% |
| John Mugisha | 11 | 4% |
| **TOTAL** | **265** | **100** |

Counsel submitted that despite the decision by this honorable court, to have the shareholding of company reinstated, the registrar general has declined to rectify the register of the company, the registrar general has further prevented the company from holding meetings on grounds that the shareholding of the company is still in contention under company petition No. 001 of 2017 which is not.

Counsel thus prayed that the applicants seek courts indulgence on the same and to make orders that the company be run as it should be and further bar the registrar from unlawfully interfering with the operations of the company.

Counsel in issue 2 submitted that the applicants seek an order of review of the judgment of this honorable court to: clearly state what the shareholding of the company is as argued above; expressly state that this matter (shareholding) is no longer up for adjudication by the registrar;

and issue orders that meetings of the company should proceed without any let or hindrance from the registrar or any official of the registrar general's office.

Counsel further noted that it is a miscarriage of justice that majority shareholders should be barred from participating in the management of the company affairs ostensibly on grounds that shareholding of the company is in dispute whereas not. A company cannot run without meetings.

Counsel further highlighted Section 150 of the Companies Act that the requirements of law to file annual returns, resolutions cannot be suspended on a whim by the registrar, having demonstrated that the minority shareholders who usurped control of the company are running it as if meetings are being held whereas not as in Annexures G & H.

Counsel prayed that court grants the application and grant the orders prayed for. On account of the recalcitrant the flagrant disregard of the orders of honourable court and pray that costs be awarded against the respondent.

Counsel for the respondent cited the case of **FX Mubuuke v. UEB High Court Misc. Application No. 98 of 2005 and Joyce Kusulakweguya v. Haider Somani & Another (HCMA NO. 40 OF 2007)** where he was in agreement with the applicant on the grounds for review.

Counsel further submits that at page 4 of the applicant's submission and more particularly the last paragraph the applicants clearly states that the application for review is not grounded on either (i) or (ii). The applicants rely on the ground of sufficient cause reason and again correctly state the meaning of sufficient reason to be of the kind analogous to the discovery of new and important matter of evidence, some mistake or error on the face of the record.

Counsel also submitted that in order to resolve the issue of properly we must ask whether the status of shareholding in Saracen Uganda limited is sufficiently analogous to the grounds of a new and important matter of evidence or a mistake or error apparent on the face of the record. The 1st Applicant also admits in paragraph 2 of his affidavit that "the said Petition is not yet resolved."

Counsel submitted that it is not akin to a new matter of evidence that the applicant could not adduce at the trial upon exercise of due diligence neither it is analogous to a mistake or error apparent on the face of the record. He further noted that there is nothing in Lafras Luitingh's affidavit in support that even a fair-minded observer might consider as a ground for review.

Counsel cited the case of **Ojijo Pascal v. Geoffrey Brown M.A 758 of 2017** where I held to this effect that "…where an error on substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out… mere error or wrong view is certainly no ground for review"

Counsel further submitted that there is nothing straightforwardly erroneous or mistaken in the judgment of this honorable court that can be subject of review. There is no new uncomplicated

matter of evidence that the applicant has suddenly discovered and there no reason sufficiently analogous to warrant a review and thus invited court to find and dismiss the application accordingly.

Counsel argued in respect of issue 1 that the applicants are not entitled to any of the orders sought as they have no demonstrable grounds of review.

Counsel for the respondent prayed that the application be dismissed with costs.

***Determination***

Section 82 of the Civil Procedure Act Cap 71 and Order 46 rule 1 of the Civil Procedure Rules S.I 71-1 empowers court to review and revise a judgment where there is a mistake or apparent error on the face of the record. A review is reconsideration of the subject matter by the same court and by the same judge. Since he/she is better suited to correct to remove any mistake or error apparent on the face of his/her own order. It is the duty of the court to correct grave and palpable errors committed by it to prevent miscarriage of justice.

In the case of *Ojijo Pascal v. Geoffrey Brown M.A 758 of 2017*, I cited the case of ***Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173*** that defined "*an error apparent on the face of the record as cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two options, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a review adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal*.

*A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self–evident and should not require an elaborate argument to be established. It will not be a sufficient*

*ground for review that another judge could have taken in a different view of the matter. That the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law cannot be ground for review but could be a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favor of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in the circumstances of that nature, it could be a good ground for appeal on its own judgment which is not permissible in law*."

According to the facts before us, the applicants filed an appeal against the orders of the deputy Registrar General above in relation to shareholding and costs of the inspector arising from the petition. The applicant further ought to have demonstrated discovery of a new and important matter of evidence. I carefully perused the applicant's affidavit in support of the notice of motion the Applicant's written submissions does not show any iota of a new matter of evidence or reason sufficiently analogous to a new matter of evidence. Secondly, the applicant should have shown an error apparent on the face of the record, the same is not shown to exist

With all the above considered, this application is devoid of merit and stands dismissed.

The orders in the Decree in Company Cause No. 11 of 2019 from which this application is reviewed stays as given by the court.

Each party shall bear its own costs.

It is so ordered.

***SSEKAANA MUSA***
***JUDGE***
***15th June 2021***